

(APPENDIX A)

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman;
Frederick Stueck, Arthur Kline and Paul A. Sweeney.

Docket No. RI 60-130

ALFRED C. GLASSELL, JR., *et al.*

**Order Denying Motion for Reconsideration and Modification
of Notice of Effectiveness of Proposed Rate Change and
Requiring Filing of Bond To Assure Refund of Excess
Charges.**

(Issued February 15, 1961)

On January 16, 1961, Alfred C. Glassell, Jr., *et al.*, (Glassell) filed a motion¹ seeking rehearing, reconsideration and modification of the Commission's Notice issued herein on December 16, 1960, pertaining to Glassell's Motion to make effective the increased rate contained in Supplement No. 5 to Glassell's FPC Gas Rate Schedule No. 1, applicable to jurisdictional sales of natural gas to Tennessee Gas Transmission Company produced from the Carthage Field, Panola County, Texas (Railroad District No. 6).

This proceeding involves a proposed redetermined increased rate to 14.4248¢ per Mcf at 14.65 psia contained in Glassell's aforementioned supplement and suspended by the Commission's order issued February 10, 1960, until July 11, 1960, and thereafter until such time as it is made effective in the manner prescribed by the Natural Gas Act.

¹A petition for rehearing of an interlocutory order such as here involved may not properly be filed. [Section 1.30 (e) of the Rules of Practice and Procedure (18 CFR 1.30 (e))]. The instant tender has been considered as a motion for reconsideration pursuant to Section 1.12 of the Commission's Rules of Practice and Procedure.

On November 3, 1960, Glassell filed their motion to make the suspended rate effective in the manner prescribed by Section 4 (e) of the Natural Gas Act. On December 16, 1960, the Commission issued its notice of effectiveness of proposed rate change requiring Glassell to file a surety bond and to charge and collect the increased rate contained in Supplement No. 5 to their FPC Rate Schedule No. 1 as of November 3, 1960, subject to refund. By their motion for reconsideration, Glassell is seeking deletion of this requirement that they file bond and charge and collect the increased rate.

In their motion, Glassell states that (1) under Section 4 (e) of the Natural Gas Act, the giving of a bond is not prerequisite to the becoming effective of a proposed rate increase; (2) that the only statutory authority for requiring a bond is that the Commission may require a bond as a condition to the collection of a proposed rate increase; (3) that their motion filed on November 3, 1960, simply required that the rate of 14.4248¢ per Mcf be made effective and did not propose that such increased rate be collected under bond or otherwise subject to refund; and (4) that their said motion was filed in accordance with the recent decision in *Associated Oil & Gas Co. v. FPC*, 280 F. 2d 31 (5th Cir., 1960). In addition, Glassell states that their motion filed on November 3, 1960, to make their proposed change in rate effective, complied with Section 154.102 of the Commission's Regulations under the Natural Gas Act, as it existed on that date, and that their said action recognized the dichotomy provided in Section 154.102 of the Commission's Regulations between a proposed rate increase "becoming effective" and the "collection" of such proposed rate increase; that subsequent to the filing of their motion, the Commission issued its Order No. 230 on December 5, 1960, amending Section 154.102 which order expressly provided that "(E) These amendments shall be effective on the issuance of this order." Glassell contends that it is clear that amendment of Section 154.102, as provided in

order No. 230, does not affect their motion to make the proposed rate increase effective.

In support of their motion, Glassell contends that one of the reasons underlying their decision not to exercise their statutory right to collect the increased rate under bond or otherwise subject to refund is the fact that 68% of the proposed increase is attributable to the interest of twelve spendthrift trusts. Glassell states that there are serious legal questions as to the power of the trustees to assume any obligations to refund the increased amounts that would be collected, plus interest, and/or to incur the expense of the bond which the Commission would require. In addition, Glassell states that they did not propose to collect the increased rate under bond, and the giving of a bond is not a condition to the becoming effective of the proposed rate increase, and that they believe that the Commission's Notice dated December 16, 1960, is erroneous insofar as it would require them to file a surety bond and charge and collect the proposed rate increase subject to refund.

The Commission on December 5, 1960, issued Order No. 20 in Docket No. R-193 amending Section 154.102 of the Commission's Regulations under the Natural Gas Act. That order requires that increased rates made effective pursuant to a motion filed under Section 4 (e) of the Natural Gas Act shall be charged and collected. Glassell's assertion that Order No. 230 is inapplicable to the subject increased rate because Glassell's motion was filed prior to the issuance of Order No. 230 is clearly irapposite. Glassell's motion pertains only to their increased rate becoming effective, while Order No. 230 relates to the collection of those increased rates made effective pursuant to Section 4 of the Natural Gas Act.

Glassell's reliance on the *Associated* decision to support their position that they need not collect their increased rates is misplaced. For the *Associated* case holds only that the filing of a surety bond is not a condition precedent to

an increased rate becoming effective. Such decision has no effect on the separate and distinct right of the Commission to require respondent to collect an increased rate made effective under Section 4 of the Natural Gas Act.

The policy decision enunciated by the Commission in Order No. 230 to require collection of increased rates is clearly in accord with the filed rate doctrine as announced by the Supreme Court in the *Montana-Dakota* case.² The Court there held that the company "can claim no rate as a legal right which is other than the filed rate, whether fixed or merely accepted by the Commission, and not even a court can authorize commerce in the commodity on other terms." And as the Fourth Circuit in an earlier opinion in *Hope Natural Gas Company v. F.P.C.* clearly stated (134 F. 2d 287, 311):

When rates were filed with the Commission pursuant to Section 4 (e) of the Act they become the only lawful rates which the utility could charge or accept (citing cases).

Furthermore, if independent producers were not required to collect increased rates made effective by motion, serious problems would confront not only pipeline purchasers of natural-gas and, in turn, distribution company purchasers, but also the Commission itself in the administration of the Natural Gas Act.

In view of the foregoing, it is concluded that Glassell's motion should be denied.

The Commission finds:

Glassell's motion sets forth no new matters or principles of law which were not fully considered by the Commission when it issued its Notice herein on December 16, 1960, or which, now being considered, warrant any change in or modification of such Notice.

² *Montana-Dakota Utilities Company v. Northwestern Public Service Company*, 341 U.S. 246, 251.

The Commission orders:

The motion for reconsideration and modification of the Commission's Notice issued herein on December 16, 1960, so as to delete therefrom any requirement that Glassell file a surety bond and charge and collect their increased rate subject to refund, is hereby denied.

By the Commission,

J. H. GUTRIDE
Joseph H. Gutride,
Secretary

(APPENDIX B)

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman;
William R. Conole and Arthur Kline.

In the Matter of
CITIES SERVICE GAS COMPANY

(Issued April 3, 1959)

Order Allowing Special Rate Schedule To Take Effect

On February 20, 1959, Cities Service Gas Company (Cities Service) tendered for filing its proposed Rate Schedule X-7, a special rate schedule for short term sale and exchange of natural gas, and asks that the aforementioned schedule be allowed to take effect as of January 20, 1959.

The proposed rate schedule comprises a special agreement dated August 26, 1958, covering the sale by Cities Service to Natural Gas Pipeline Company of America for a one-year period of an average of 38,000 Mcf per day and also for the exchange of up to 25,000 Mcf per day between the companies aforesaid prior to the date the sale

commences. Cities Service will charge 15¢ per Mcf for the natural gas.

The Commission finds:

Good cause has been shown that the 30-day notice requirement provided in Section 154.22 of the Commission's Regulations under the Act be waived with respect to Cities Service's proposed Rate Schedule X-7, and that this rate schedule be allowed to take effect as of January 20, 1959.

The Commission orders:

(A) The 30-day notice requirement provided in Section 154.22 of the Commission's Regulations under the Act is waived with respect to Cities Service's Rate Schedule X-7, and this rate schedule is allowed to take effect as of January 20, 1959.

(B) The issuance of this order shall constitute full notice of the filing and publication of the rate schedule in question insofar as its applicable date is concerned.

(C) Nothing contained in this order shall be construed as a waiver of the requirements of Section 7 of the Natural Gas Act; nor shall this order be construed as constituting approval by this Commission of any service, rate, charge, or classification, or any rule, regulation, or practice affecting them; nor shall this order be deemed as recognition of any claimed contractual right or obligation affecting or relating to any service, rate, charge, or classification.

(D) This order is without prejudice to any findings or orders which have been or may be made by this Commission in any proceeding now pending or hereafter instituted by or against Cities Service Gas Company.

By the Commission.

J. H. GUTRIDE

Joseph H. Gutride

Secretary.